REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 1-15, 24, and 31-33 remain pending in the present application. Independent claim 1 has been amended to include the limitations of dependent claim 2, independent claim 8 has been amended to include the limitations of dependent claim 9, and independent claim 24 has been amended to include limitations similar to those included in claims 1 and 8.

Claims 1-4, 7-11, 13-15 and 24 stand rejected under 35 U.S.C. § 102 as being unpatentable over U.S. Patent No. 5,741,123 to Pauley ("the '123 patent"). Claims 5 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '123 patent in view of U.S. Patent No. 3,751,179 to Wassmann ("the '179 patent"). Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over the '123 patent in view of U.S. Patent No. 5,224,823 to Cordts ("the '823 patent"). Finally, claims 31-33 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '123 patent in view of U.S. Patent No. 6,543,449 to Woodring et al. ("the '449 patent"). Applicant respectfully traverses these rejections for the reasons presented below.

Independent claim 1 recites a radial impeller, an example of which is shown in FIG. 2 from the present application, which is reproduced below for the Examiner's convenience. The reference numerals used below in the discussion of claim 1 are also provided for the Examiner's convenience in understanding the present invention. It should be noted that claim 1 is not intended to be limited to the specific impeller shown in FIG. 2.

The impeller of the present invention includes a plurality of impeller blades (48) disposed on one face of the impeller body. Each impeller blade (48) extends from a leading end (50) of the blade generally adjacent a hub (42) toward a trailing end (52) of the blade generally at the perimeter of the impeller. An inlet area (54) is defined between each pair of adjacent blades generally adjacent the hub. The inlet area is defined as the area at the radius of the leading end of

the adjacent blades bounded by a height of the leading end of the adjacent blades and the one face of the impeller body. This inlet area is shown by the shaded area (54) in FIG. 2.

An outlet area 56 is defined between each pair of adjacent blades generally adjacent the perimeter of the impeller. This outlet area is defined as the area at the radius of the trailing end of the adjacent blades bounded by the height of the trailing end of the adjacent blades and the one face of the impeller body. This outlet area is shown by the shaded area (56) in FIG. 2. Each inlet area (54) is substantially equal to each corresponding outlet area (56) for each pair of adjacent blades.

In addition, claim 1, as amended, further recites a "plurality of partial blades [(58)] disposed on the one face of the impeller body, wherein each partial blade is positioned between a respective pair of adjacent impeller blades and extends from a position radially outward of the inlet area defined between the adjacent impeller blades to the perimeter of the impeller." Applicant respectfully submits that the cited references do not teach or suggest an impeller having these features.

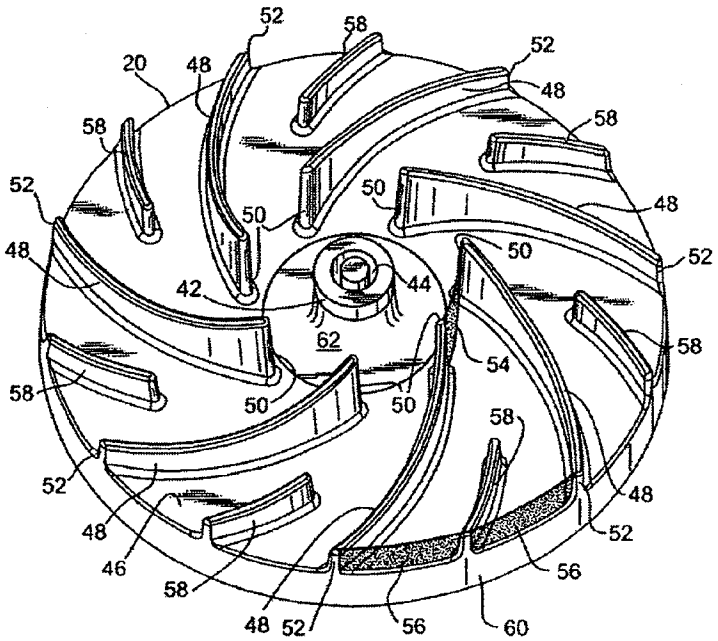

FIG. 2

The '123 patent describes a turbocharger 10 having an impeller 30 that is shown in FIG. 2 of the '123 patent reproduced below. The impeller 30 includes an elevated fan 36 having fan blades 44 centered about opening 40. The impeller 30 also includes curved, downward sloping impeller blades 48, each one secured to a fan blade 44.

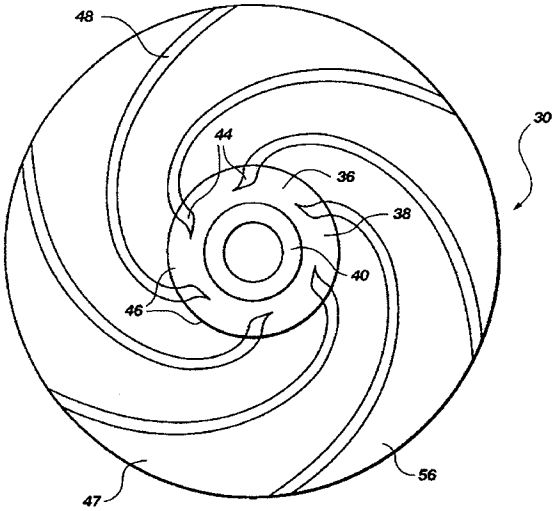

Fig. 2

The '123 patent does not teach or suggest any partial blades in between the impeller blades 48, and thus clearly does not disclose a "plurality of partial blades disposed on the one face of the impeller body, wherein each partial blade is positioned between a respective pair of adjacent impeller blades and extends from a position radially outward of the inlet area defined between the adjacent impeller blades to the perimeter of the impeller" as recited in amended claim 1.

Independent claims 8 and 24, as amended herein, include a description of an impeller that corresponds to that recited in independent claim 1 as amended. Accordingly, the distinctions noted above with respect to the cited reference and independent claim 1 are equally applicable to independent claims 8 and 24.

Independent claim 31 recites a method of supplying gas that includes providing a pressure generator comprising a motor, a rotatable drive shaft driven by the motor, and an impeller mounted on the drive shaft. The pressure generator pressurizes gas from a source of breathing gas such that the pressure generator outputs a substantially constant pressure over a range of flows from 10-150 l/min. In addition, the pressure generator delivers the substantially constant pressure, which is a pressure selected from a range of pressures between 10-65 cmH_2O. Applicant respectfully submits that the cited references do not teach or suggest a method of supplying gas having these features.

As noted above, the Examiner rejected claims 31-33 under 35 U.S.C. § 103 as being unpatentable over the '123 patent in view of the '449 patent. However, the '449 patent should be disqualified under 35 U.S.C. § 103(c) because the '449 patent qualifies as prior art with respect to the present application only under 35 U.S.C. § 102(e) and because the present application and the '449 patent were, at the time the invention of the present application was made, owned by the same person (Respironics, Inc.) or subject to an obligation of assignment to the same person (Respironics, Inc.). 35 U.S.C. § 103(c); MPEP §§706.02(l), 706.02(l)(1) and 706.02(l)(2)(II). Accordingly, the applicant respectfully requests that the Examiner's rejection be withdrawn.

Furthermore, because the applicant believes that the '449 patent clearly must be disqualified as prior art under 35 U.S.C. § 103(c), the applicant will not address the disclosure of the '449 patent or the merits of the obviousness rejection based thereon, but expressly reserves the right to do so should the need arise.

For the reasons presented above, applicant respectfully submits that independent claims 1, 8, 24, and 31, as amended, are not anticipated or rendered obvious by the cited references. In addition, claims 2-7, 9-15, and 32-33 are also not rendered obvious due to their dependency from independent claims 1, 8, 24, and 31. Accordingly, applicant respectfully requests that the above rejection of claims 1-15, 24, and 31-33 be withdrawn.

It should be noted that the applicant has not addressed each rejection of the dependent claims. Any rejection of a dependent claim not specifically addressed is not to be

construed as an admission by the application of the correctness of that rejection. Rather, the applicant believes that the independent claims are patentably distinguishable over the cited references for the reasons noted above, so that the rejection of the dependent claims need not be addressed at this time. Applicant reserves the right to address the rejection of any dependent claim at a later time should that become warranted.

This response is being filed within the three-month statutory response period which expires on March 31, 2010. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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